IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 204 of 1999

For Approval and Signature:

HONOURABLE MR. JUSTICE R.P.DHOLAKIA :

HONOURABLE MR. JUSTICE K.S.JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJITSINH PRABHATSINH DABHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR NITIN M AMIN for Appellant(s) : 1,
MS MITA S. PANCHAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 This appeal is directed against the judgment and order dated 12th February, 1999 passed by the learned Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No. 195 of 1998 whereby, the appellant – original accused no. 1 was convicted for the offences punishable u/s. 302 of the Indian Penal Code, 1860 [for short, "the I.P.C."] while original accused no. 2 & 3 were acquitted of the charges leveled against them. For conviction u/s. 302 of the I.P.C., the appellant was sentenced to undergo Rigorous Imprisonment for Life with fine of Rs.5,000/- and in default of payment of fine, Simple Imprisonment for a further period of Two Years. The appellant was given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under;

2.1 On 22.04.1998, at around 1830 hrs., while deceased - Jaswantsinh Anopsinh Dabhi was returning to his home situated in the outskirts of Village Ghodasar, Taluka Mehamdavad, District

Nadiad, he met the complainant – Parbatsinh Badalsinh Dabhi on the way. After proceeding together for some distance, they parted ways at a particular place. At that time, the complainant noticed that the appellant herein and two other accused persons who were hiding in a nearby bush, came out of the bush and restrained the deceased from proceeding further. Thereafter, the said two other accused persons caught hold of the deceased by his shoulders and the appellant, who was having a sharp edged weapon – '*dharia* ' in his hands, inflicted several blows by it on the person of the deceased. As a result thereof, the deceased suffered severe bodily injuries and fell on the spot.

2.2 On noticing the said incident, the complainant and one Kiransinh Bhimsinh Dabhi shouted for help and a crowd gathered at that place. However, by that time, the accused persons, including the appellant, fled the scene of offence, leaving behind the weapon – '*dharia* ' used in the commission of the alleged offence.

2.3 When the said two persons reached the scene of

offence, they noticed that the deceased was lying on the ground in a badly bruised condition. Therefore, they looked out for some conveyance so as to take the deceased to the Hospital for necessary treatment. However, since no vehicle was available at that point of time, a request was made to the driver of a State Transport Bus, which was plying through the Village at the relevant point of time, to take the deceased to the Hospital. On such request being made, the deceased was taken to Mehamdavad General Hospital, after taking necessary Certificate from the 'Sarpanch' of the Village on demand being made by the Driver and Conductor of the said S.T. Bus. However, after reaching the said Hospital and on examination, the Medical Officer who had examined the deceased declared the deceased to be dead.

2.4 At around 2330 hrs. a complaint was filed against the accused persons, including the appellant, with Mehamdavad Police Station, which was registered as I – C. R. No. 92 of 1998 for offences punishable under Sections 302 r/w. Section 34 of the I.P.C. On the said complaint, the Investigating Officer started necessary preliminary investigation and he went to the concerned

Hospital. Inquest '*panchnama* ' of the dead body was performed. '*Marnottar* ' form was filled up and the dead body was sent for conducting post-mortem. Statements of several witnesses were also recorded.

2.5 '*Panchnama* ' of the scene of offence was done in the presence of *'panchas '* and necessary '*muddamal*' ' articles were collected. The '*muddamal* ' articles were then sent to F.S.L. for examination along with forwarding letter. In the meanwhile, the appellant and other accused persons were arrested and sent to judicial custody. On receipt of the F.S.L. Report, PM Report and other reports of the deceased, they were kept in the investigation file.

2.6 At the end of investigation, the Investigating Officer filed charge-sheet against the appellant and other accused persons before the Court of learned Judicial Magistrate, First Class, Mehamdavad. As the charges leveled against the appellant and other accused persons were exclusively triable by the Court of Sessions, the learned J.M.F.C., Mehamdavad committed the case

to the District & Sessions Court, Kheda at Nadiad and it was numbered as Sessions Case No. 195 of 1998. Later, the matter was transferred to the learned Addl. Sessions Judge for disposing of the same on merits. As the accused persons pleaded not guilty to the charges leveled against them, trial was conducted.

3.0 In order to prove the guilt against the accused persons, the prosecution had examined in all seven witnesses namely, PW – 1 Parbatsinh Badalsinh Dabhi at Exhibit – 21, PW – 2 Dr. Naishad Bhanubhai Bhatt at Exhibit – 24, PW – 3 Kiransinh Bhimsinh Dabhi at Exhibit – 26, PW – 4 Nizamkhan Nivaskhan at Exhibit – 27, PW – 5 Ashokbhai Chandubhai Mochi at Exhibit – 30, PW – 6 Jethabhai Bhikhabhai at Exhibit – 33 and PW – 7 Balvantsinh Dalpatsinh Rana at Exhibit – 35.

3.1 The prosecution had also relied upon several documentary evidence and, more particularly, the evidence in the form of complaint at Exhibit – 22, '*panchnama* ' of the place of incident at Exhibit – 29, the PM Note at Exhibit – 15 and the F.S.L. Report at Exhibit – 18.

3.2 On submission of the closing '*purshis* ' by the learned APP, the learned Addl. Sessions Judge recorded further statement of the accused persons u/s. 313 of the Code of Criminal Procedure, 1973 and after hearing learned counsel for the respective parties, the learned Addl. Sessions Judge convicted the appellant for the offence punishable u/s. 302 r/w. Section 34 of the I.P.C. and acquitted the other accused persons of the charges leveled against them. Being aggrieved by the same, the appellant has approached this Court by way of this appeal.

4.0 Mr. Nitin M. Amin learned Advocate for the appellant has contented that the case of the prosecution is entirely based upon the evidence of two witnesses viz. PW – 1 at Exhibit – 21 and PW – 3 at Exhibit – 26. He has submitted that the said two witnesses are the relatives of the deceased persons and that they are chance witnesses. Therefore, their evidence could not be fully relied upon for recording conviction.

4.1 Learned Advocate has further submitted that the

alleged incident in question took place at around 1830 hrs. and the impugned complaint at Exhibit – 22 was filed only at 2330 hrs. meaning thereby that there was a delay of about five hours in filing the same. Therefore, the averments made in the said complaint cannot be relied upon more particularly, when the complainant is a relative of the deceased. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside.

5.0 Ms. Mita S. Panchal learned APP has submitted that there was some dispute between the parties with regard to an agricultural land on account of which the appellant had grudge against the deceased. She has submitted that in order to fulfill his oblique motives, the appellant committed the offence in question.

5.1 Learned Advocate has further submitted that the said two witnesses viz. PW – 1 at Exhibit – 21 and PW – 3 at Exhibit – 26 are eye-witnesses to the incident in question and that the said fact is also established from their cross-examination. She has, therefore, submitted that merely because the said two witnesses are the relatives of the deceased, their evidence could not be

discarded.

5.2 Learned Advocate has further submitted that the recovery of '*muddamal* ' weapon – '*dharia* ' from the scene of offence also proves the guilt of the appellant, which gets complete support from the report of the F.S.L. and also from the evidence of PW – 1 at Exhibit – 21 and PW – 3 at Exhibit – 26. She has, therefore, submitted that the Court below was completely justified in convicting the appellant for the offence in question. Hence, the impugned judgment and order passed by the Court below deserves to be confirmed.

6.0 We have heard learned counsel for the respective parties and perused the entire oral as well as documentary evidence on record.

7.0 The trial Court has examined the complainant – Parbatsinh Badalsinh Dabhi as PW – 1 at Exhibit – 21. In his deposition, he has stated that on the date of incident while he was proceedings towards the outskirts of the Village for the purpose of

attending the natural call, he met the deceased on the way and, thereafter, both of them proceeded together for some distance until they parted their ways after reaching a particular point. Some time later, he noticed that the deceased was attacked by three persons including the appellant and that two accused persons who were unarmed, had caught hold of the deceased by his shoulders and the appellant, who was having a '*dharia* ' in his hands, inflicted several '*dharia* ' blows on the person of the deceased. This witness has also categorically deposed that when the accused persons, including the appellant, realized that some persons had seen them committing the offence in question, they fled the scene of offence and in that hurry the appellant forgot to collect the said '*dharia* ' used in the commission of the offence in question. He has also specifically deposed about the clothes worn by the deceased at the relevant point of time. It may be noted that this witness has also narrated about the rivalry between the appellant and the deceased with regard to a dispute pertaining to some land.

7.1 This witness has also been cross-examined by the other side. However, nothing incriminating has come out from his

cross-examination which may lead us to believe the evidence led by him to be untrue or unreliable. Thus, from the evidence led by this witness, it is established that on the date of the incident, the deceased was attacked by three persons, including the appellant and that two accused persons who were unarmed, had caught hold of the deceased by his shoulders and the appellant, who was having a '*dharia '* in his hands, inflicted several '*dharia '* blows on the person of the deceased. The evidence led by this witness describes in clear and unequivocal terms the role played by the appellant and the other two accused persons in the entire episode. It also describes about the '*muddamal '* weapon – '*dharia* " and the clothes worn by the deceased at the relevant point of time. Thus, it could be concluded that this witness was an eye-witness to the incident in question.

8.0 The same facts have been narrated by PW – 1 in the complaint filed by him at Exhibit – 22. There are no material contradictions between what has been stated by this witness in the complaint at Exhibit – 22 and in the deposition before the Court below as PW – 1 at Exhibit – 21. A contention has been raised by

learned Advocate for the appellant that the averments made in the complaint at Exhibit – 22 can not be said to be trustworthy and reliable since the same was filed after a delay of about five hours.

8.1 It is a matter of record that the deceased was taken to the Hospital in a State Transport Bus since at that point of time no other conveyance was available. It is also a matter of record that the deceased was declared to be brought dead to the Hospital on examination and since no other member of the family of the deceased was available in the Hospital at that point of time, PW – 1 remained in the Hospital till some responsible member of the family arrived there. Ultimately, at the earliest point of time, PW – 1 went to the Police Station and lodged the impugned complaint at Exhibit – 22. Keeping in mind the aforesaid factual scenario, it has to be concluded that the complainant had filed the impugned complaint at the earliest point of time. Thus, the aforesaid contention raised by learned Advocate for the appellant holds no ground and deserves to be rejected.

9.0 The prosecution has examined one Kiransinh Bhimsinh

Dabhi as PW – 3 at Exhibit – 26 whom it claims to be an eye-witness to the incident in question. The evidence led by PW – 1 at Exhibit – 21 gets corroboration from the evidence led by this witness. This witness has also narrated similar facts as has been narrated in the complaint at Exhibit – 22 and the evidence led by the complainant as PW – 1 at Exhibit – 21. Nothing incriminating has come out from his cross-examination which may lead us to believe the evidence led by him to be untrue or unreliable. It may be noted that this witness has also categorically narrated about the '*muddamal* ' weapon – '*dharia '* and the clothes worn by the deceased at the relevant point of time before the Court below.

10.0 Thus, from the evidence led by PW – 1 Parbatsinh Badalsinh Dabhi at Exhibit – 21 and PW – 3 Kiransinh Bhimsinh Dabhi at Exhibit – 26, it is proved beyond doubt that both the above two witnesses are eye-witnesses to the incident in question. Their presence at the scene of offence, at the relevant point of time, was also a natural one. Both these witnesses have deposed in clear terms about the specific role played by the appellant and the other two accused persons in the entire episode. Both have

categorically narrated about the entire incident in their statement given before the police authority also. Apart from that the accused persons as well as the deceased are residents of the same Village and belong to the same community and, therefore, are known to each other. The incident in question took place at around 1830 hrs. and, therefore, there will not be any possibility of mis-identification also. Thus, we find the evidence led by the aforesaid two witnesses to be wholly trustworthy and reliable. Hence, we accept the findings given by the Court below regarding the same.

11.0 Over and above the evidence led by the aforesaid two eye-witnesses, the prosecution case also gets support from the '*muddamal '* weapon – '*dharia '* seized from the scene of offence by way of '*panchnama'* at Exhibit – 29. In their depositions, both PW – 1 at Exhibit – 21 and PW – 3 at Exhibit – 26 have categorically deposed that while fleeing the place of incident, after committing the offence in question, the appellant and the two other accused persons forgot to take with them the '*muddamal '* weapon – '*dharia'* used by the appellant in the commission of the said offence. The said fact is also narrated in the complaint filed by PW – 1 at Exhibit

– 22.

11.1 From the report of the F.S.L. at Exhibit – 18, it is proved that the '*muddamal* ' weapon – '*dharia'* was having human blood stains on it and of Blood Group 'A', which is similar to the Blood Group of the deceased. The *'muddamal*' ' clothes of the deceased also contained human blood stains of Blood Group 'A'. Both the '*muddamal* ' weapon – '*dharia '* as well as the clothes worn by the deceased at the relevant point of time have been identified by both the aforesaid two witnesses viz. PW – 1 and PW – 3 before the Court below. Thus, the prosecution has been able to prove beyond doubt that the offence in question was committed by the '*muddamal* ' weapon – '*dharia '* recovered from the scene of offence.

12.0 The Medical Officer who has performed the post-mortem of the deceased has been examined as PW – 2 at Exhibit – 24. In his deposition, he has categorically stated that the injuries sustained could be possible by the infliction of '*dharia* ' blows and that they were sufficient to cause death. He has also deposed that

the injuries sustained by the deceased were anti-mortem. So, by way of medical evidence also, in the form of deposition of the Medical Officer as PW – 2 at Exhibit – 24 and the Post-mortem note of the deceased at Exhibit – 15, the prosecution has been able to prove the guilt of the appellant.

13.0 It may be noted that both the aforesaid two witnesses have also deposed about the enmity between the appellant and the deceased with respect to a piece of land. From the record, it appears that the appellant was having grudge against the deceased since the deceased, at that point of time, was holding a piece of land which was earlier under the possession of the appellant and the appellant was desirous to take back possession of the said piece of land from the deceased. Thus, the motive behind the commission of the offence is also established beyond doubt.

14.0 So far as the aspect of homicidal death is concerned, the same was not disputed before the Court below and has not been disputed even before this Court. In that view of the matter, we

are not discussing the same in detail and, accordingly, have no hesitation in holding that the deceased died a homicidal death.

15.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt against the appellant. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

16.0 In the result, the appeal is dismissed. Office is directed to send the records & proceedings back to the trial Court concerned forthwith.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

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